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ABSTRACT

Barlavington Manor is a privately owned long-stay children's home in Sussex, England, with accomodation for up to 30 children. Its proprietors were reported to have refused admission to black children and to have informed local authorities of their refusal, thus contravening the Race Relations Act of 1976. The investigation by the Commission for Racial Equality consisted of interviews with the proprietors of Barlavington Manor, local authority social workers who placed children there, and the proprietors of Old Rectory children's home, which is in a similar rural environment and which does admit black children. The interviews with the proprietors of Barlavington Manor and the social workers revealed that the proprietors did not openly discriminate against black children but advised against their being admitted because of the hostility of the local community. The Commission concluded that there was no evidence that the proprietors had refused or deliberately omitted on racial grounds to admit a black child to the home. However, the proprietors had not shown that the requirement or condition they applied was justifiable on non-racial grounds. The proprietors were given notice to comply with the Race Relations Act. (MC)

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Barlavington Manor Children's Home

Report of a Formal Investigation

into certain activities of Mr. and Mrs. John Ellis, the proprietors of Barlavington Manor Children's Home.

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REPORT OF A FORMAL INVESTIGATION INTO CERTAIN ACTIVITIES OF MR AND MRS JOHN ELLIS, THE PROPRIETORS OF BARLAVINGTON MANOR CHILDREN'S HOME

Preface

1. The Commission for Racial Equality have three statutory duties:

   (a) to work towards the elimination of racial discrimination;

   (b) to promote equality of opportunity and good relations between persons of different racial groups; and

   (c) to keep under review the working of the Race Relations Act 1976.

   The Commission have the power under section 48 of the Act to conduct formal investigations for any purpose connected with carrying out those duties.

2. This is the report of a formal investigation of Barlavington Manor, a privately-owned children's home in Petworth, Sussex. Barlavington Manor is a long-stay home with accommodation for up to 30 children. The investigation was started after the Commission received information which gave grounds for belief that the proprietors would not admit a child to the Home if he or she was coloured, and that they had informed local authorities of this. After making the enquiries described in this report, the Commission concluded that the proprietors had contravened the Act by applying the unjustifiable requirement or condition that children proposed for admission should not be coloured, and by inducing local authorities not to propose coloured children for admission. The Commission therefore issued a non-discrimination notice to the proprietors requiring them not to contravene the Act in those ways, to inform local authorities that they had changed their practices accordingly, and to furnish the Commission with certain information to enable them to check that the notice was being complied with.

3. The first priority in placing ethnic minority children, as with all children, is to take account of individual needs. The law does not require a home to admit coloured children regardless of other criteria, nor does it require local authorities to place coloured children in any particular type of home regardless of what encironment would be most suitable for them. Indeed, cultural and linguistic background are among the factors which may need to be considered in deciding which, among the available alternatives, would be the most suitable home for a child in care, and authorities and homes should pay special attention to such factors in providing for ethnic minority children. What the law does require, however, is that race, colour or ethnic or national origins in themselves should not determine the decision, and that other criteria should not be applied if they adversely affect children of one racial group more than another and cannot be justified irrespective of the race, colour or ethnic or national origins of the children to whom they are applied.

4. The Commission will be seeking further discussions with the proprietors of Barlavington Manor on the preparations they may need to make for complying with the non-discrimination notice. They intend also to hold discussions with officers of the user authorities on the policy those authorities will now adopt with respect to the placement of children in the Home, and their policies generally on the placement of ethnic minority children.

5. More generally, the Commission wish to bring the implications of the Race Relations Act to the attention of children's homes and all those in local authorities and voluntary organisations with responsibility for the placement and care of children in residential establishments. Ethnic minority children in care are among the most vulnerable members of our society and racial discrimination must not be allowed to add to their disadvantages. This report shows how a home may exclude children because of their colour, and how local authorities may themselves risk breaking the law by accepting and acting on racially discriminatory instructions. It deals with a narrow aspect of provision for children in care, but the findings suggest that particular attention should be given to the practices most likely to promote the interests of ethnic minority children when their families are unable to care for them. The Commission will therefore be pursuing these issues in their discussions with the DHSS, local authorities, professional associations and voluntary organisations.

INTRODUCTION

1. During the summer of 1977, the Commission's attention was drawn to an article in the Health and Social Service Journal in which it was alleged that Mr John Ellis had said that he would not admit coloured children into the Barlavington Manor Children's Home. It was also reported that Southwark Social Services Department had in use two forms which specified that coloured children were not admitted to the Home. Further information was provided to the Commission by the journalist who had written the article.

2. Following the publication of this article, the Commission received, on 14 July 1977, a letter from the London Borough of Hammersmith, stating that their Social Services Committee had learned that coloured children were not accepted into the Home and had consequently decided no longer to place any children there. This letter was copied to Mr and Mrs John Ellis (called hereafter the respondents), who replied to the Borough through solicitors, that the attitudes of the local community were such that it was not in the best interests of coloured children to be admitted. A copy of their reply was sent to the Commission.

3. On the basis of this information, the Commission formed the belief that the respondents might have discriminated on racial grounds in the admission of children, either directly or indirectly, in breach of Section 20; that their criteria for admitting children might constitute a discriminatory practice in contravention of Section 28; and that they might have instructed their staff in contravention of Section 30, and induced or attempted to induce local authorities in contravention of Section 31, to discriminate in the provision of services to children in care. (Section 20 makes it unlawful to discriminate on racial grounds in the provision of goods, facilities or services to the public or a section of the public. Under section 28, it is an unlawful discriminatory practice to apply to persons a requirement or condition which is unjustifiable and which adversely affects persons of one racial group considerably more than others, or would do so if the occasion arose for applying it to them. Section 30 and section 31 make it unlawful to instruct, induce or attempt to induce another to do an act of unlawful discrimination. These sections are set out in full in appendix A).

4. The Commission therefore decided in October 1977 to hold a formal investigation with the following terms of reference:

> "The Commission believe that Mr and Mrs Ellis, the proprietors of Barlavington Manor Children's Home, may have done or may be doing acts of any or all of the following descriptions:
>
> (i) unlawful discriminatory acts in breach of Section 20 of the Race Relations Act 1976;
>
> (ii) contraventions of Section 28 of the Race Relations Act 1976;
>
> (iii) contraventions of Section 30 of the Race Relations Act 1976;
>
> (iv) contraventions of Section 31 of the Race Relations Act 1976;
>
> The investigation shall be confined to those acts."

In accordance with Section 49(4), the respondents were notified of the grounds for the Commission's belief stated in the terms of reference and were offered the opportunity to make written or oral representations, or both, with respect to the proposed investigation. They made written representations which were considered by the Commission in December 1977. Having considered the representations, the Commission decided to embark upon the investigation.

BARLAVINGTON MANOR CHILDREN'S HOME : GENERAL BACKGROUND

5. Barlavington Manor is a large house, in several acres of grounds, situated about three miles outside the village of Petworth, West Sussex. It was purchased by the respondents for use as a residential long-stay children's home in 1965. It is managed by the respondents, assisted by their son Patrick. Seven staff are employed at the Home: three resident "aunties" who look after the children's domestic needs, a resident handyman who also organises outings and holidays, a full-time cook. a full-time cleaner,and part-time helper. When the investigation began 27 children were resident in the Home. They were of both sexes and ranged in age from seven to seventeen years. The children resident were in the care of the London Borough of Kensington and Chelsea (15 children), the London Borough of Southwark (3 children) and the Hampshire County Council (9 children).

6. In an interview with the respondents and Mr Patrick Ellis it was established that only the proprietors and Mr Patrick Ellis dealt with admissions to the Home. Mr John Ellis explained that, since Barlavington Manor was a long-stay home, vacancies seldom arose. When a vacancy was about to arise, he, Mrs Ellis or Mr Patrick Ellis would either mention this to a visiting social worker, or to any local authority officer who might telephone to enquire about vacancies. The demand for long-stay homes for children in care was such that no other methods of advertising vacancies were necessary. Mr Patrick Ellis explained the normal procedure for filling vacancies as follows. When a social worker made enquiries about a vacancy for a child, details of the child's age, sex, character, family background, and any physical or mental handicaps were taken. If on the basis of this initial information the child seemed suitable, the social worker was invited to take the child to the Home for a day or a weekend, when an assessment was made of the proposed placement. If the Ellises, the social worker and the child were satisfied that Barlavington Manor would be a suitable home, the child would be admitted. Decisions on a possible placement were always made at this stage.

THE PROPRIETORS' POLICY ON ADMISSION OF COLOURED CHILDREN

7. The article in which it had been alleged that the proprietors of Barlavington Manor did not admit coloured children had been written by Mr Drew Clode, a journalist. Mr Clode had later told the Commission that in a telephone conversation on 22 May 1977 Mr John Ellis had made the following statements:

> "We don't actually take coloured children here because they wouldn't fit in".
>
> "I'm not basically prejudiced but I don't want to be a front runner in getting such children into the area. I wouldn't be doing the community a service if I brought a bunch of coloured children here".

"Integration with the community would be a problem for them after they were eighteen".

"I let it be widely known that there are very few coloured children in the area".

8. In a letter to the Commission dated 12 July 1977, referred to above, the London Borough of Hammersmith had stated:

"Barlavington Manor"

"The Borough's Social Services Committee was recently made aware of difficulties experienced by the Directorate of Social Services in connection with the children's home above, which had stated that attitudes in the local community were such that coloured children would not receive a fair chance if placed at the home. As a result the Directorate of Social Services no longer uses the home for any of its placements. The Committee felt however, that the Commission's attention should be drawn to the statement made by the Home".

In their reply to this letter, copied to the Commission, the respondents had stated, through their solicitors:

"It is obviously essential in the interests of both Barlavington Manor [sic] that the welfare of the children is considered of primary importance, be those children of whatever colour or creed, and it is for this reason that the Borough were made aware of what could be difficulties which might not otherwise be experienced elsewhere. Indeed we believe that it was and still is an integral part of our client's function to make known just such difficulties. Great harm might occasion at someone else's hands if he were to ignore reality. The failure to give such information will be deemed irresponsible by yourselves if he had not informed you of all the relevant facts".

The respondents' representations

9. In their written representations, the respondents stated that they had never refused to accept a child into the Home on the grounds of his or her colour. They said that they had accepted children described as "an Indian child, two half Chinese children and one coloured half West Indian child". They agreed, however, that their responsibility to a child ended only when he or she left the Home and was fully integrated into the local community, and that, because of the prejudices of the local population, "the difficulties experienced in integrating a coloured child into the Petworth community are almost insurmountable".

10. The respondents argued that West Sussex, and particularly the Petworth area, was "conservative, wary of strangers, inward looking, family orientated and unwilling to accept change". The children at the Home were regarded by the local community with "something approaching suspicion" and "the faults of one tend to reflect on the others". In addition to the burden of being in care, the children carried the burden of the difficulties of integration into the community. There were very few coloured adults, and even fewer coloured children in the Petworth area, and because of the prejudices of the community, coloured children at the Home would carry the additional burden of rejection because of their colour. They said that they were nevertheless prepared to accept coloured children, but that the interests of the

children were paramount: if they believed that a child was unlikely to be accepted into the community, this should be a major factor in deciding whether he or she should be placed in the Home. They did not share the prejudice of the local community, but recognised its existence and believed that consequently it was not in the best interests of coloured children to be placed in the Home.

11. In support of their contention that coloured children would meet racial prejudice in the local community, the respondents stated that a boy described as half Chinese was mistrusted and disliked and was called "Chinky" or "Kung-Fu" by local people and that he resented this. They referred also to personal experiences of their son, Mr Patrick Ellis, and a friend of their son, when they visited the local area with coloured friends.

Further enquiries

12. The respondents and Mr Patrick Ellis were interviewed at the Home, in the presence of their solicitor, on 11 January 1978. Mr John Ellis explained that their criteria for children coming to Barlavington Manor were that they should be familiar with or likely to enjoy a rural environment, interested in animals and keeping pets, not likely to require or to be used to the forms of entertainment found in urban areas, and should preferably be under 12 years of age. Social workers with whom the proprietors were in touch knew these criteria and would already have taken them into account before suggesting a child for placement. Mr Ellis said that the only children who had been rejected were difficult older teenagers, who it was considered should attend an establishment where stricter discipline was applied. They were unable to provide any details of such rejections, but Mr Ellis stated that none had been coloured teenagers.

13. Mr Patrick Ellis stated that when an enquiry was made about a placement, he or one of his parents would ask for certain details of the child and his or her character and background. They would not ask about the child's colour or nationality. Mr John Ellis explained that the social workers who made enquiries knew the Home and knew that the local community would not be suitable for a coloured child, and would consequently not make enquiries in respect of such a child. Mr Ellis said that he had only once completed a form for a local authority. The London Borough of Southwark had about a year previously asked him to complete a form for their records. Mr Ellis said that he had included the words "no coloured children" on the form and had returned it to Southwark.

14. Asked about coloured children previously accepted into the Home Mr Ellis said that they had accepted a part Indian child and two part Chinese children. The respondents could provide no details of the part Indian child, except that he had been resident in about 1967 or 1968 and had been placed in the Home by the London Borough of Kensington and Chelsea. The two part Chinese children were a girl who lived in the Home from 1972 until late or early 1974, and a boy who had been admitted in 1967 and was still resident in the Home. In addition, a deaf and dumb boy who was part West Indian had stayed at the Home for one month in 1968, with the agreement of Kensington and Chelsea, to visit his brother and sister who were resident in the Home.

15. The respondents were asked to describe what difficulties they believed coloured children would encounter in the local community. Mr Ellis said that children at the Home encountered hostility because the local people

thought that children in care would be troublesome. The local people were wary of accepting the children into local organisations although some progress had been made in this respect, for example, in participation in local football teams. Mr Ellis also thought that schoolteachers expected children from the Home to be troublesome and were quick to reprimand the children and to complain to him about them.

16. As an example of the kind of prejudice that would be faced by coloured children, Mr Patrick Ellis said that the boy who was part Chinese was called "Chinky" or "Kung-Fu" by a local garage attendant. (In their representations, the respondents had stated that the boy was mistrusted and disliked by local people, and was known generally as "Chinky" or "Kung-Fu"). He attended a local high school, where he was regarded as a naughty boy, but Mr Ellis knew of no difficulties arising at the school as a result of the boy's Chinese origin. Mr Patrick Ellis referred to a friend who had a black girl friend and had been spat upon when he went with her in a local public house. He said that on occasions when he himself had taken a coloured girl friend into Petworth he had been able to feel hostility coming from people in shops and public houses. The respondents also said that they had heard stories of two local black children being bullied by other children at school.

17. The respondents repeated the argument made in their representations that coloured children would have to face not only the hostility of the local community to any child in care, but also the additional burden of hostility because of their colour and that this double burden would make the difficulties of integrating a coloured child into the local community insurmountable. They said however that there had never been any pressure put upon them by members of the local community not to accept coloured children. Although they had said in their representations that they considered their responsibility to a child only ended when he or she had been fully integrated into the community on reaching the age of 18 and although they had told Mr Drew Clode that integration into the community would be a problem for coloured children after they were 18, they said that very few, if any, of the children leaving the Home stayed in Petworth, and could therefore give no indication of how well a child leaving the Home would be accepted into the local community.

LOCAL AUTHORITIES WITH CHILDREN AT BARLAVINGTON MANOR

18. As noted above, all the children resident in the Home at the time of the investigation were in the care of the London Borough of Kensington and Chelsea, the London Borough of Southwark, or Hampshire County Council. Interviews were held with staff of each of these authorities.

London Borough of Kensington and Chelsea

19. An interview was held on 14 March 1978 with Mr A J Page, Social Work Adviser in Child Care for the Borough. Mr Page confirmed that the Authority had fifteen children in their care resident at Barlavington Manor, one of whom was of mixed English and Chinese origins. He confirmed that another child of mixed race had been placed in the Home some years previously, but had died after a short time. He had no knowledge of a boy of mixed English and West Indian parentage or a part Indian child ever being placed at the Home by the Authority.

20. Mr Page said that the factors taken into account in considering whether to place a child at Barlavington Manor were the child's age, whether he or

she had grown up in Kensington and Chelsea, what kind of children he or she had been used to living with, and whether he or she would benefit from a rural environment. The child's colour would also be a factor because Petworth was a small, conservative community, likely to be reactionary and hostile to change; and the child might in consequence be exposed to a damaging experience; the local schools had few coloured pupils, and the people in Petworth were not used to seeing coloured people. Mr Page said that because of these considerations he would only try to place a coloured child at Barlavington Manor if he was desperate for accommodation and if the child had special attributes which would make the Home suitable for him. He had never tried to place a coloured child there so far. None of the children placed in the Home had been placed in preference to coloured children also in need of placement.

21. Mr Page provided a copy of a report he had written on Barlavington Manor following a visit to the Home in September 1967. The report included the following. "When asked about coloured children, Mr Ellis expressed some obvious misgivings because of the very rural setting and the lack of coloured families either in the local community or in the schools". Although the proprietors had given the Authority no written instructions not to place coloured children in the Home, their assessment of the local situation had been taken into account. Mr Page said that he had never been asked by the proprietors about the colour of a child he was trying to place, but thought that they would assume that he was aware of their assessment and would not try to place a coloured child with them.

London Borough of Southwark

22. An interview was held on 22 March 1978 with Mr R Edwards, an Area Team Leader, Mr S Jefferson and Mrs J Kellow, the social workers, who were responsible for children in the care of the Authority resident in the Home. A further interview was held on 11 April 1978 with Mr Buchanan, a Senior Social Worker, who had been unable to attend the first meeting. Mr G Armstrong, Assistant Director, Residential and Special Day Care Division, was interviewed on 23 May 1978.

23. Mr Edwards confirmed that the Authority had three children in their care resident at Barlavington Manor. All three were white, but had not been placed in preference to coloured children. He said that, whenever possible, children were placed in homes run by the Authority itself, but that each social worker had a list of private and voluntary homes which they could contact if no places were available in the Authority's Homes. The entry for Barlavington Manor on this list stated: "reference to any placement in this Home must be made to the Assistant Director Social Services (R & D C Division) in the first instance". There was no such instruction for other homes.

24. Mr Jefferson said that he had placed one child at the Home and this had been an emergency placement. He had contacted Barlavington Manor on the advice of Mr Buchanan and had been asked by Mr Ellis for details of the child's age, race, sex and background. He said that before the publicity he had had no indication that coloured children were not admitted to the Home, and that the proprietors had not indicated this to him during the four visits he had made to the Home. He said however that his impression of Petworth was that it was an old-fashioned area and was likely to be racially prejudiced, and that he could understand why the proprietors would be reluctant to take a coloured child into the Home.

25. Mrs Kellow said that she was responsible for a child resident in the Home. but had not herself placed the child there. She said that she had never considered placing a child at Barlavington Manor because she was more familiar with other homes. She had never heard from colleagues that Barlavington Manor did not take coloured children, nor had she been told this by the proprietors.

26. Mr Buchanan said that he had placed one white child at Barlavington Manor. He had never attempted to place a coloured child at the Home but had never avoided trying to do so because of the child's colour or ethnic or national origins. He said that he thought he could persuade Mr Ellis to accept a coloured child if the child was suitable in other respects. Race or colour would be one criterion out of many. The child would have to fit in with the Home in terms of age and sex, the fairly strict discipline and the requirement to do routine jobs in the Home, and would have to be fond of animals and likely to enjoy the rural environment. He said that all the children placed by Southwark at Barlavington Manor met these criteria. He said that he had not been told by other social workers or by the proprietors that they would not consider accepting a coloured child. He said however that he had discussed the placement of coloured children with Mr John Ellis about two years previously. Mr Ellis had said that Petworth was a rural community with very few ethnic minority residents and that it would be difficult to fit coloured children into it. Mr Buchanan was inclined to agree with this view.

27. Mr Armstrong said that the Southwark Social Services Department had sent questionnaires to Barlavington Manor in September 1973, November 1975 and May 1977 to obtain details of the facilities provided by the Home. All three forms had been completed by Mr John Ellis and returned. On the first form, Mr Ellis had written "not ESN or Handicapped or Coloured", on the second "Not Coloured", and on the third "No Coloured Children. Asiatics accepted". Mr Armstrong said that on each occasion, the information on the questionnaire, including the instructions regarding coloured children, had been summarised and included in a list of private homes circulated to all the Authority's social workers. He confirmed that these were the lists referred to in Mr Clode's article.

28. Mr Armstrong said that before June 1977, social workers had been able to place children at Barlavington Manor without obtaining prior authorisation from himself. On 2 June that year, when the publicity about Barlavington Manor had occurred and when he became aware of the facts stated in the original list to social workers, the Director of Social Services had instructed that the entry for Barlavington Manor should be replaced with one instructing social workers to refer all placements at Barlavington Manor to Mr Armstrong in the first instance. At the same time the Social Services Committee had become aware of the difficulties with Barlavington Manor and had decided to suspend all placements at the Home pending a report by Mr Armstrong. Mr Armstrong had visited the Home in June 1977 and reported to the Social Services Committee in September 1977, recommending that the Committee approve the continued use of the Home by the Authority. His report stated:

> "Discussions with the owners clearly indicated that the controversy was extremely unfortunate in that the Home already has a half Chinese boy and another child of mixed race. It was also understood that the admission of an Anglo-West Indian child was also under consideration".
>
> "The owners stated their concern for black children in an area which is highly rural and which has, in the past, shown rejecting attitudes

> towards black children admitted both to Barlavington Manor and to another children's home in the locality, which is now understood to be closed. It would appear their policy has been not to deny admission to black children, but to be selective, particularly in relation to what the local community and the Home can offer them. The owners, moreover, have stated, in writing, that it is their intention to comply with the requirement of the new legislation by both considering black children for admission and accepting them as appropriate".

The reference in the last sentence quoted is to a letter Mr Armstrong received from Mr Ellis which stated: "As requested, I would like to confirm in writing our intention to consider admissions of coloured children to the Home".

29. Mr Armstrong said that his report had been circulated to all area team leaders, but that the instruction to refer all placements at Barlavington Manor to him in the first instance was still in force. He could not, however, recall any reference being made to him, and was certain that no social worker had consulted him about the placement of a coloured child at the Home. He said that over 50 per cent of the children who came into care in Southwark were coloured. He thought that social workers would be aware of the situation at Barlavington Manor and would not try to place a coloured child there despite the undertaking that had been given.

Hampshire County Council

30. Information was obtained in writing from the Hampshire County Council which currently had nine children resident at Barlavington Manor. The Authority had on file, and still in use, a report on the Home made in June 1973. The report states in part:

> "Mr and Mrs Ellis think it unwise to introduce any coloured children to their Home because they might feel isolated in a non-coloured community".

As far as was known, none of the Authority's social workers had attempted to place a child at Barlavington Manor in the previous five years.

OTHER AUTHORITIES

31. Interviews were held with officers of two local authorities which had placed children at Barlavington Manor but no longer had children resident in the Home.

The London Borough of Hammersmith

32. As reported above, the London Borough of Hammersmith had written to the Commission stating that they had decided no longer to use the Home because of the difficulties in placing coloured children at the Home. An interview was held on 25 April 1978 with Mr Middlestorb, Assistant Director, Residential and Day Care Services, Miss Rojas, the Principal Officer, and Miss Gay, a Senior Officer.

33. Mr Middlestorb said that social workers were responsible for placing children in Homes once a care order had been made. The practice was

to place children in the Authority's own homes whenever possible, but there was an index of private homes for use where no places were available in the Authority's homes. If there were no places available in these homes, the social worker would either ask colleagues if they knew of a suitable place, or would consult the index. An index card existed for Barlavington Manor which had been annotated:"Definitely no coloured children". A copy of this index was provided to the Commission. Neither Mr Middlestorb nor the others interviewed knew who had made this annotation, but Mr Middlestorb stated that social workers would comply with the instruction.

34. Miss Rojas said that her duties included visiting and reporting on private children's homes. She had visited Barlavington Manor in 1968 and had discussed the placement of coloured children with the proprietors. She said that they had indicated that they did not wish to take coloured children. The reasons they had given were that very few coloured people lived in Petworth, that there would be a hostile reaction in the local community to coloured people, and that admitting a coloured child to the home would add further problems to a child who already had severe problems to cope with. Miss Rojas said that she would have included this conversation in her report, and that the annotation "definitely no coloured children" would have been added to the index card for Barlavington Manor following her report (19 April 1968). This report, she said, was no longer in existence.

35. Mr Middlestorb, Miss Rojas and Miss Gay all agreed that a large proportion of the children taken into care by the Borough were coloured, and that if Barlavington Manor had been receptive to them, they might have considered placing coloured children there. However, Mr Middlestorb added that the Home had not been used by the Authority since 1971 because it was not considered suitable for children from a "big city environment".

The London Borough of Richmond

36. An interview was held on 16 March 1978 with Mr A Clarke, Senior Assistant Director of Social Services, and Mr J W Roberton, a social worker.

37. Mr Clarke said that the Authority had only ever placed or tried to place two children at Barlavington Manor. He said that most of the children who came into care were placed in or close to London so that they could keep in touch with their family and friends. The children placed at Barlavington Manor had previously been resident in the Home while in the care of Kensington and Chelsea, and had been placed there by Richmond for that reason. The Authority had no information about Barlavington Manor, nor was it included in the Authority's lists.

38. Mr Roberton had been responsible for the children placed at Barlavington Manor. He said that when the placement was arranged, the proprietors had not asked about the children's race or colour and they had not indicated to him during his visits to the Home that they were not prepared to take coloured children.

THE OLD RECTORY CHILDREN'S HOME

39. The Old Rectory is located about ten miles from Petworth, in the village of Singleton near Chichester. It is a private, long-stay children's home, with facilities similar to those of Barlavington Manor, and is situated in a similar rural environment. An interview was held at the Home on 10 June 1978 with the proprietors, Mr and Mrs Webber. Their deputy Mr Grasty was also present.

40. Mr and Mrs Webber had taken over the Home about two years previously. They said that when they took over, there had been 27 children resident, of whom seven had been coloured. There were now 21 children, of whom six were coloured. Two were Nigerian, two were West Indian, and two were of mixed parentage. Three of these children had been admitted to the Home since Mr and Mrs Webber took over. The children in the Home were in the care of Kingston, Wandsworth, Ealing, Kensington and Chelsea, Tower Hamlets, Brent and West Sussex.

41. Mr and Mrs Webber said that they had no reservations about taking coloured children. Mr Webber stated that although there were very few coloured children in the local schools (three of the coloured children in the Home went to schools where they were the only coloured children) there had been no difficulties in integration. The schools approached had not been reluctant to take them and treated children from the Home no differently from other children. There had been no difficulties between coloured and white children in the Home itself and the white children had not been hostile or difficult when coloured children had been admitted.

42. Mr and Mrs Webber said that in their view there was no significant differences between the type of people living in Singleton and those living in Petworth. There were no coloured families living in Singleton and very few in Chichester. Mr Webber said that it was important to establish a good relationship with the people in the village. Local people visited the Home on special occasions such as bonfire night. The Home did not face hostility from the local community, and the children, including the coloured children, were integrated into the community in that they visited friends' houses, and took part in clubs, the Scouts and Brownies, local football clubs, and other social activities. Furthermore, there had been no incidents of hostility involving the people in the neighbourhood. The only difficulties experienced in relation to the coloured children were in getting their hair done or obtaining special food.

43. Following the interview with Mr and Mrs Webber, Mr Page of the London Borough of Kensington and Chelsea was asked to comment on why his Authority was prepared to place black children at the Old Rectory but not at Barlavington Manor. He said that the two black children resident at the Old Rectory had previously been placed in a remote home in Eartham near Chichester but had been transferred to the Old Rectory with other children when the proprietors of their previous home had purchased new property. Mr Page said that the difference between the Old Rectory and Barlavington Manor was that the proprietors of the former had looked after black children for many years and were consequently skilled in offering a positive expertise to coloured children and appeared not to experience any difficulties whereas the proprietors of the latter had never looked after black children and judged that there would be difficulties if any were admitted to the Home. Mr Page accepted the 'historical situation' and was quite happy for black children to be placed at the Old Rectory in view of the skills of the proprietors. He added that, given the shortage of residential places and the speed with which decisions had to be taken to ensure the welfare of children, it was proper for social workers to give due weight to the proprietors' knowledge of the total environment of their Homes.

THE COMMISSION'S CONCLUSIONS

44. On the basis of the information presented above, the Commission concluded that there was no evidence that the respondents had, since the Act came into force, refused or deliberately omitted on racial grounds to admit a

child to the Home. They concluded also that since the respondents were themselves solely responsible with the assistance of their son for the acceptance of children into the Home, they had not instructed their employees to do any unlawful act.

45. The Commission concluded, however, that the respondents had:

a) contravened section 28 of the Act by applying to children submitted for placement in the Home an unjustifiable requirement or condition that they should not be coloured; and

b) contravened section 31 of the Act by inducing or attempting to induce local authorities and their child care officers to discriminate on racial grounds in the provision of services or facilities to children in their care by deliberately omitting to propose coloured children for admission to the Home.

46. Contravention of Section 28

Under section 28 of the Act it is an unlawful discriminatory practice to apply to persons a requirement or condition which results in an act of indirect discrimination or would be likely to result in such an act if applied to persons of any racial group to whom there had so far been no occasion for applying it. (See Appendix A). Indirect discrimination means the application of a requirement or condition which is applied equally to all but which adversely affects persons of one racial group considerably more than others and which cannot be shown to be justifiable on non-racial grounds.

47. The respondents had argued that the likelihood of a child being accepted by the local community should, in the child's own interest, be an important consideration in deciding whether he or she should be admitted to the Home. They had stated their view that a coloured child was most unlikely to satisfy this test and that consequently coloured children should not be admitted. It appeared to the Commission, therefore, that they were applying a requirement or condition for admission to the Home that the child should not be coloured. It was self-evident that children of certain racial groups would be considerably less likely to be able to comply with this requirement or condition than others and that, in the relevant circumstances, this would be to their detriment.

48. The Commission acknowledged the concern of the respondents for the welfare and happiness of the children entrusted to their care. They nevertheless concluded that the respondents had not shown that the requirement or condition they applied was justifiable on non-racial grounds. The Commission had particular regard to the following:

a) the evidence provided by the respondents in support of their contention that coloured children would be rejected by, or face hostility from, the local community; and

b) the actual experience of the proprietors of the Old Rectory.

49. The description of the Petworth community given by the respondents appeared to the Commission to have been based on general impressions and isolated experiences. The respondents had made assumptions about the reaction of the local community generally to black children, but had provided scant evidence that these assumptions would be borne out in practice, or that any difficulties could not be overcome. Mr and Mrs Webber had said that the Old Rectory was situated in a rural community much like that of Petworth, and that they had successfully achieved acceptance by the community of the white and the coloured children living in the Home. The Commission considered the possibility that there were genuine differences in attitude between the two communities. They concluded however that any differences there might be would not be such as to justify the requirement or condition applied by the respondents.

50. Contraventions of section 31

The respondents admitted that they had made it clear to local authorities and to individual social workers that they would not wish to accept coloured children into the Home. An instruction on an index card held by the Hammersmith Social Services Department to the effect that coloured children should not be submitted to the Home, placed there in 1968 following a discussion between an officer of the Authority and Mr John Ellis, remained in effect after the Act came into force. and despite the Authority's decision to cease using the Home because of the respondent's views. In the Hampshire County Council Social Services Department a report placed on file for consultation by social workers stated that the respondents did not consider it right to place coloured children in the Home. At the London Borough of Kensington and Chelsea the Commission were told that the respondents' views on the desirability of placing coloured children in the Home were known to the Authority and were taken into account. At the London Borough of Southwark, although a discriminatory instruction issued to social workers had been withdrawn following receipt of a letter from Mr Ellis stating his intention to consider coloured children for placement, it appeared that the respondents' views were still known and taken into account by social workers.

51. The Commission concluded, therefore, that the respondents had contravened section 31 of the Act.

OUTCOME

52. In the light of their conclusions set out above, the Commission decided in October 1978 to give notice to the respondents that they were minded to issue a non-discrimination notice requiring them:

a) not to contravene sections 28 and 31 of the Act;

b) to inform local authorities concerned that they had changed their practices in order to comply with (a) above; and

c) to furnish certain information to the Commission to enable the Commission to verify their compliance with (a) and (b) above.

53. In accordance with section 58(5) of the Act, the respondents were offered the opportunity to make written or oral representations, or both written and oral representations, with respect to the proposed notice.

54. The respondents, through their solicitors, made written representations in which they said that they accepted unreservedly the Commission's conclusions, but requested the Commission not to serve the proposed notice. They stated that they would be prepared to enter into a formal undertaking to comply with the requirements which would be contained in the proposed notice. The Commission considered these representations and concluded that the proper course of action in order to assure themselves that their requirements would be complied with was to serve the proposed notice. The notice was therefore served in December 1978.

55. Following consultations with the user authorities, the respondents decided in January 1979 to appeal to the Southampton county court against the requirements of the notice to furnish information to the Commission concerning children admitted or denied admission to the Home during the next five years, on the ground that this information was confidential. In informal discussions, it was agreed that this difficulty would be overcome by replacing the requirement in the notice to furnish the names of children with one requiring initials, sex and date of birth only. Together with the name of the authority responsible for a child, this would enable the Commission, if necessary, to obtain further information relevant to particular admissions or refusals while not breaching confidentiality. It was also agreed that a requirement of the notice concerned with coloured children should apply instead to children of all racial groups. These changes were made by the court, with the consent of both parties, on 19 February 1979 and the notice as amended became final on that date. The text of the amended notice is given in Appendix B.

APPENDIX A

Section 20

(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services -

(a) by refusing or deliberately omitting to provide him with any of them; or

(b) by refusing or deliberately omitting to provide him with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in the first-mentioned person's case in relation to other members of the public or (where the person so seeking belongs to a section of the public) to other members of that section.

(2) The following are examples of the facilities and services mentioned in subsection (1) -

(a) access to and use of any place which members of the public are permitted to enter;

(b) accommodation in a hotel, boarding house or other similar establishment;

(c) facilities by way of banking or insurance or for grants, loans, credit or finance;

(d) facilities for education;

(e) facilities for entertainment, recreation or refreshments;

(f) facilities for transport or travel;

(g) the services of any profession or trade, or any local or other public authority.

Section 28

(1) In this section "discriminatory practice" means the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part II or III taken with section 1(1)(b), or which would be likely to result in such an act of discrimination if the persons to whom it is applied included persons of any particular racial group as regards which there has been no occasion for applying it.

(2) A person acts in contravention of this section if and so long as -

(a) he applies a discriminatory practice; or

(b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

(3) Proceedings in respect of a contravention of this section shall be brought only by the Commission in accordance with sections 58 to 62.

Section 30

It is unlawful for a person -

(a) who has authority over another person; or

(b) in accordance with whose wishes that other person is accustomed to act

to instruct him to do any act which is unlawful by virtue of Part II or III, or procure or attempt to procure the doing by him of any such act.

Section 31

(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III.

(2) An attempted inducement is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

APPENDIX B

COMMISSION FOR RACIAL EQUALITY

NON-DISCRIMINATION NOTICE

(RACE RELATIONS ACT 1976. SECTION 58)

To: Mr and Mrs John Ellis
Proprietors
Barlavington Manor Children's Home
Petworth
Sussex

Whereas, in the course of a formal investigation, the Commission for Racial Equality have become satisfied that you had committed acts to which Section 58(2) of the Race Relations Act 1976 applies namely :

(i) that on diverse dates since the 13th day of June 1977 you have operated a discriminatory practice in contravention of Section 28 of the Race Relations Act 1976 by applying a requirement or condition that children placed in residence in the Children's Home of which you are the proprietors should not be coloured, this requirement or condition being such that it cannot be shown to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the persons to whom it is applied;

(ii) that since the date aforesaid you have contravened Section 31 of the Race Relations Act 1976 by inducing or have attempted to induce local authorities and their officers responsible for the placement of children in residential care, to discriminate on racial grounds in the provision of services or facilities to such children by deliberately omitting to propose coloured children for admission to the Home;

and are of the opinion that further acts are likely to be committed unless changes are made in your practices or other arrangements as respects the consideration of admission of children into Barlavington Manor Children's Home, Petworth, Sussex and any other Children's Home of which you or either of you are the proprietors.

Now, therefore, without prejudice to your other duties under the Act, you are hereby required, in pursuance of Section 58(2) of the Act, not to commit any such act as aforesaid or any other act which is an unlawful discriminatory act by virtue of Sections 28 or 31 of the Act, by reference to Part III thereof.

In so far as compliance with the aforesaid requirement involves changes in any of your practices or other arrangements, you are further required, in pursuance of the said Section 58(2), to inform the Commission as hereinafter provided that you have effected these changes and what these changes are and to take the following steps for the purpose of affording that information to other persons concerned namely :

To notify immediately all local authorities who have at any time placed children in residence at your Home that you have made these changes and what the changes are.

You are further required, in pursuance of Section 58(3) of the Act, to furnish the Commission as hereinafter provided with the following information to enable them to verify your compliance with this notice, namely :

(a) confirmation that you have notified local authorities of changes made in your practices in order to comply with this notice;

(b) the initials, sex, date of birth and ethnic origins of all children placed in the Home during the period of five years following the date on which this notice becomes final and the names of the local authorities or other bodies responsible for the placement of such children; and

(c) details of any occasions during the period of five years from the date on which this notice becomes final, when children were proposed for admission to the Home and were not admitted, to include the initials, sex, date of birth and ethnic origin of each child, the names of the local authorities or other bodies proposing the child for admission and a statement of the reasons why he or she was not admitted.

The information to be furnished by you for the Commission in pursuance of the notice shall be furnished as follows:

(i) By providing the Commission within 14 days of this notice becoming final with copies of letters to local authorities informing them of the changes you have made in your practices or other arrangements;

(ii) By furnishing the Commission the information required in (b) above within 14 days of the child being placed;

(iii) By furnishing the Commission the information required in (c) above within 14 days of the child being refused admission.

Dated the 8th day of December 1978

Amended by order of His Hon Judge Raymond Stock on 19th February 1979.

This notice was issued by the Commission, the provisions of Section 58(5) of the Act having been complied with.